



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 28 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

John W. Mellowes, Vice President
Charter Manufacturing Company, Inc.
4300 E. 49th Street
Cuyahoga Heights, Ohio 44125

Re: Charter Manufacturing, Inc., Cuyahoga Heights, Ohio

Dear Mr. Mellowes:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Charter Manufacturing Company, Inc. d/b/a Charter Steel, and case docket no. CAA-05-2012-0051. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on SEP 28 2012.

Pursuant to paragraph 31 of the CAFO, Charter Steel must pay the civil penalty within 30 days of SEP 28 2012. Your electronic funds transfer must display the case name: In the Matter of Charter Manufacturing Company, Inc., d/b/a Charter Steel, the docket number CAA-05-2012-0051 and the billing document number 2751203A054.

Please direct any questions regarding this case to Mr. Luis Oviedo, Associate Regional Counsel, at 312.353.9538.

Sincerely,

William MacDowell, Chief
Air Enforcement and Compliance Assurance (MN/OH)

Enclosure

cc: Ann L. Coyle, Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
L. Oviedo/C-14J
Valencia White, Cleveland DAPC
Ed Fasko, Ohio EPA, Northeast District Office
Tom McEligott, Quarles & Brady LLP

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

| | | |
|--|---|---|
| In the Matter of: |) | Docket No. CAA-05-2012-0051 |
| |) | |
| Charter Manufacturing Company, Inc. |) | Proceeding to Assess a Civil Penalty |
| d/b/a Charter Steel |) | Under Section 113(d) of the Clean Air Act, |
| Cuyahoga Heights, Ohio |) | 42 U.S.C. § 7413(d) |
| Respondent. |) | |

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Charter Manufacturing Company, Inc. (Charter Steel), a corporation doing business in Ohio.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

**RECEIVED
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U.S. EPA-REGION 5
2012 SEP 28 AM 9:34**

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

Statutory and Regulatory Background

9. On August 13, 1984, EPA approved Ohio Administrative Code (OAC) Rule 3745-15-07 as part of the federally enforceable State Implementation Plan (SIP) for Ohio. 49 Fed. Reg. 32181 (August 13, 1984).

10. OAC Rule 3745-15-07 prohibits the “emission or escape into the open air from any source or sources whatsoever of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors, or any other substances or combinations of substances” to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property.

11. On March 10, 2003, EPA approved OAC Rule 3745-31-05 as part of the federally enforceable SIP for Ohio. 68 Fed. Reg. 2909 (March 10, 2003).

12. OAC Rule 3745-31-05 authorizes Ohio Environmental Protection Agency (OEPA) to issue a Permit-To-Install with terms and conditions as necessary to ensure compliance with applicable laws and to ensure adequate protection of environmental quality.

13. On June 10, 2004, OEPA issued a Permit-to-Install to Charter Steel, Facility ID#1318171623 (“PTI”) for certain emissions units, including emission unit P900, an electric arc furnace (“EAF”). That PTI was modified on February 12, 2008. The PTI includes the following specific provisions:

a. Part III.A.I.2.b of the PTI for P900 prohibits visible emissions from the melt shop building greater 6 percent opacity, as averaged over six minutes.

b. Part III.A.II.1 of the PTI for P900 requires the pressure drop across the melt shop baghouse be maintained within the range of 3.0 to 8.0 inches of water while the EAF is in operation.

c. Part III.A.III.2.a of the PTI for P900 requires visible emission observations be conducted at the melt shop at least once per day when P900 is operating in the melting and refining periods. Opacity is to be determined based on the arithmetic average of 24 consecutive 15-second opacity observations.

d. Part III.A.IV.3 of the PTI for P900 requires Charter Steel to submit “quarterly written deviation (excursion) reports that identify all periods of time during which the pressure drop for the melt shop baghouse did not comply with the allowable range specified in A.II.1.”

e. Part III.A.III.7 of the PTI for P900 requires Charter Steel to obtain an analysis of the melt shop baghouse dust for at least chromium, magnesium, manganese, lead, zinc, and mercury content on a monthly basis.

14. Furthermore, under Section 111 of the Act, 42 U.S.C. § 7411, EPA promulgated the Standards of Performance for New Stationary Sources (“NSPS”) for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 17, 1983 (“Steel Plants”) at 40 C.F.R. §§ 60.270a through 60.276a. The NSPS for Steel Plants applies to Charter Steel.

15. Under Section 111 of the Act, 42 U.S.C. § 7411, EPA promulgated the NSPS General Provisions at 40 C.F.R. §§ 60.1 through 60.19. These NSPS General Provisions apply to Charter Steel as owner and operator of an affected facility.

16. The NSPS, at 40 C.F.R. § 60.11(d), requires that Charter Steel, at all times, including periods of startup, shutdown, and malfunction, to the extent practicable, maintain and operate its facility, including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

17. Under Section 113(a)(1) of the Act, 42 U.S.C. § 7413 (a)(1), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating a SIP. Under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is violating the NSPS regulations. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

18. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred after March 15, 2004 through January 12, 2009, and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for CAA violations that occurred after January 12, 2009 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

19. The Administrator may assess a penalty greater than \$295,000 where the Administrator and the Attorney General of the United States jointly determine that a matter involving a larger penalty is appropriate for an administrative penalty action. 42 U.S.C. § 7413(d)(1) and 40 C.F.R. Part 19.

20. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving a penalty greater than \$295,000 is appropriate for an administrative penalty action.

21. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

22. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

Factual Allegations and Alleged Violations

23. Charter Steel owns and operates a steel plant facility at 4300 E. 49th Street, Cuyahoga Heights, Ohio. This facility is a stationary source and an affected source under 40 C.F.R. § 60.2, and includes emission unit P900 and related emissions units.

24. Charter Steel is also subject to the Ohio SIP. Specifically, Charter Steel is subject to OAC Rule 3745-15-07, which limits emissions into the open air, and OAC Rule 3745-31-05, which allows OEPA to issue a PTI to Charter Steel based on specific terms and conditions.

25. Charter Steel is subject to the NSPS for Steel Plants at 40 C.F.R. §§ 60.270a through 60.276a, and the NSPS General Provisions at 40 C.F.R. §§ 60.1 through 60.19.

26. On March 31, 2011, EPA issued to Charter Steel a notice/finding of violation alleging that it violated the following requirements:

- a. The Ohio SIP, by exceeding 6 percent opacity from the melt shop building, as averaged over six minutes, on October 8, 2008, August 28, 2009 and November 18, 2009.
- b. The Ohio SIP, for violations of Charter Steel's PTI, including: 1) failing, from January 2007 through September 2010, to maintain pressure drop across the melt shop baghouse within the range of 3.0 to 8.0 inches of water while P900 operated, in violation of Part III.A.II.1 of the PTI; 2) failing, from April 27, 2007 through January 29, 2010, to identify all periods of time during which the pressure drop for the melt shop baghouse did not comply with the allowable range, in violation of Part III.A.IV.3 of the PTI; and 3) failing for four months, during the semi-annual reporting period of July 1, 2009 through December 31, 2009, to obtain an analysis of the melt shop baghouse dust for mercury and magnesium content, in violation of Part III.A.III.7 of the PTI.
- c. The NSPS General Provisions, by failing to operate the melt shop baghouse "air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions."

27. On November 28, 2011, EPA issued to Charter Steel a second notice/finding of violation alleging that it violated the NSPS General Provisions and the Ohio SIP, for violations of Charter Steel's PTI, by failing to test P900 at its maximum production rate since December 26, 2006 (i.e., within 180 days of startup).

28. On April 26, 2011 and on subsequent occasions, representatives of Charter Steel and EPA have discussed the March 31, 2011 and November 28, 2011 notices/findings of violation. Charter Steel acknowledges that, both directly and through legal counsel, it conferred and submitted written information to EPA, and had the opportunity to present any evidence, arguments, comments, regarding the legal and factual determinations on which this Order is based, its applicability to respondent, the appropriateness of its terms or any other relevant and material issue.

29. EPA alleges that Charter Steel violated the Ohio SIP, OAC rules 3745-15-07 and 3745-31-05, and the NSPS General Provisions, at 40 C.F.R. § 60.11(d) and 40 C.F.R. § 60.08.

Civil Penalty

30. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case and cooperation, prompt return to compliance, and agreement to perform a supplemental environmental project, Complainant has determined that an appropriate civil penalty to settle this action is \$ 102,647.00.

31. Within 30 days after the effective date of this CAFO, Respondent must pay a \$102,647.00 civil penalty by:

ACH electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state Respondent's name, the docket number of this CAFO and the billing document number.

32. Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO and the billing document number to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Luis Oviedo (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

33. This civil penalty is not deductible for federal tax purposes.

34. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

35. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty for each quarter during which the assessed penalty is overdue.

This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

Supplemental Environment Project

36. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment by reducing fumes released to the environment from the west end of its melt shop building at its facility.

37. At its Cuyahoga Heights facility, Respondent must complete the SEP as follows:

- a. The proposed SEP involves installation of a new roof ventilation hood to collect fumes from the west end of the melt shop.
- b. A new induced draft duct will be installed on the melt shop roof to connect the new ventilation hood to the existing fume system vertical main duct located on the northern side of the melt shop. The new duct will be installed with a flow control damper and expansion joint at the northern roof edge. Duct supports will be installed on the roof and north wall to support the new duct.
- c. A platform will be installed along the north melt shop roof edge to provide access to the flow control damper. Access to the new platform will be provided by extending the access ladder at the northwest corner of the melt shop to the roof.
- d. The SEP shall be completed by December 31, 2013.

38. Respondent must spend at least \$ 629,000.00 in total capital and engineering costs. Any amount spent by Charter in connection with this project in excess of \$ 629,000.00 shall not be considered part of this SEP or subject to the terms of this CAFO.

39. Respondent's authorized representative certifies as follows:

I certify that Charter Steel is not required to perform or develop the SEP by any law, regulation, order, or agreement or as injunctive relief as of the date that I am signing this CAFO. I further certify that Charter Steel has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

I certify that Charter Steel is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. I further certify that, to the best of my knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not expired.

As provided in §114 of the CAA, (42 U.S.C. § 7414), EPA may inspect the facility to monitor

Respondent's compliance with this CAFO's SEP requirements.

40. Respondent must submit a SEP completion report to EPA by March 1, 2014. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized cost of goods and services used to complete the SEP documented by copies of invoices, purchase orders or cancelled checks that specifically identify and itemize the individual cost of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

41. Respondent must submit all notices and the SEP completion report required by this CAFO by first-class mail to the Compliance Tracker of the Air Enforcement and Compliance Assurance Branch at the address provided in paragraph 32, above.

42. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

43. Following receipt of the SEP completion report described in paragraph 40, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 45.

44. If EPA exercises option b above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 45, below.

45. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraph 37, Respondent must pay a penalty of \$241,063.
- b. If Respondent did not complete the SEP satisfactorily, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 38, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 38, Respondent must pay a penalty of \$24,100.
- d. If Respondent did not submit timely the SEP completion report or any other report required by paragraph 40, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

| <u>Penalty per violation per day</u> | <u>Period of violation</u> |
|--------------------------------------|---|
| \$500 | 1 st through 14 th day |
| \$750 | 15 th through 30 th day |
| \$1,000 | 31 st day and beyond |

46. EPA's determinations of whether Respondent completed the SEP satisfactorily and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

47. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraph 31, above, and will pay interest and nonpayment penalties on any overdue amounts.

48. Any public statement that Respondent makes referring to the SEP must include the following language: "Charter Steel undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Charter Steel for violations of the Clean Air Act."

49. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

50. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

51. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

52. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 50, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

53. Respondent certifies that it is complying fully with NSPS, the terms of its PTI and the Ohio SIP.

54. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

55. The terms of this CAFO bind Respondent, its successors and assigns.

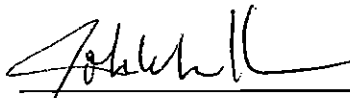
56. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

57. Each party agrees to bear its own costs and attorneys fees in this action.

58. This CAFO constitutes the entire agreement between the parties.

Charter Manufacturing Company, Inc., Respondent

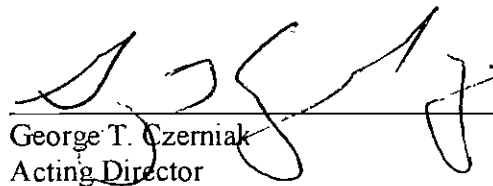
9/19/2012
Date



John W. Mellowes
Vice President
Charter Manufacturing Company, Inc.

United States Environmental Protection Agency, Complainant

9/25/12
Date



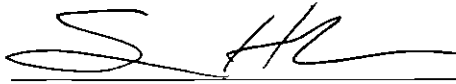
George T. Czerniak
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5

Consent Agreement and Final Order
In the Matter of: Charter Manufacturing Company, Inc.
Docket No. CAA-05-2012-0051

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

9 - 26 - 12
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Charter Manufacturing Company, Inc.
Docket No. CAA-05-2012-0051

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2012-0051 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed a second copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

John W. Mellowes, Vice President
Charter Steel
4300 E. 49th Street
Cuyahoga Heights, Ohio 44125

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

Ann L. Coyle
Regional Judicial Officer (C-14J)
U.S. Environmental Protection Agency
77 W. Jackson Boulevard
Chicago, Illinois 60604

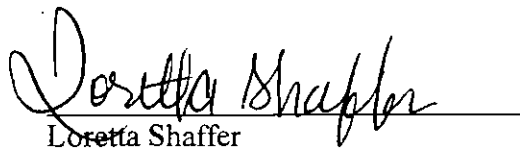
I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Valencia S. White
Cleveland Division of Air Quality
Cleveland Department of Public Health
Division of Air Quality
75 Erieview Plaza, 2nd Floor
Cleveland, Ohio 44114

Ed Fasko
Air Pollution Group
Ohio EPA NEDO
2110 East Aurora Road
Twinsburg, Ohio 44087

Thomas P. McElligott
Attorney at Law
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4497

On the 28 day of September 2012.


Loretta Shaffer
AEBAB, PAS

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